Approved: _T͟h͟u͟ G͟.A͟.B͟u͟_    **06 MAG     3233**

ORIGINAL

THOMAS G. A. BROWN
Assistant United States Attorney

Before:    HONORABLE KEVIN NATHANIEL FOX
           United States Magistrate Judge
           Southern District of New York

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                                        :
UNITED STATES OF AMERICA                :    **SEALED COMPLAINT**
                                        :
        - v. -                          :
                                        :    Violation of
TODD MOELLER,                           :    18 U.S.C. §§
ADAM VITALE, and                        :    1037(a)(2), (a)(3),
CHRIS WADE,                             :    and (b)(2)(C); and
                                        :    2
        Defendants.                     :
                                        :    COUNTY OF OFFENSE:
                                        :    NEW YORK
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SOUTHERN DISTRICT OF NEW YORK, ss.:

    JASON B. BROWN, being duly sworn, deposes and states that he is a Special Agent of the United States Secret Service (the "Secret Service"), and charges as follows:

### COUNT ONE

    1.   From on or about April 26, 2005, up to and including on or about August 23, 2005, in the Southern District of New York and elsewhere, TODD MOELLER, ADAM VITALE, and CHRIS WADE, the defendants, unlawfully, willfully and knowingly, in and affecting interstate commerce, used a protected computer to relay and re-transmit multiple commercial electronic mail messages with the intent to deceive and mislead recipients and internet access services as to the origin of such messages, in which the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during a 24-hour period, 25,000 during a 30-day period, and 250,000 during a 1-year period, to wit, MOELLER, VITALE, and WADE used computer servers and open proxies to disguise the true origin of spam e-mails they sent to AOL subscribers via the Internet.

                (Title 18, United States Code,
           Sections 1037(a)(2) and (b)(2)(C); and 2.)

## COUNT TWO

2.  From on or about April 26, 2005, up to and including on or about August 23, 2005, in the Southern District of New York and elsewhere, TODD MOELLER, ADAM VITALE, and CHRIS WADE, the defendants, unlawfully, willfully and knowingly, in and affecting interstate commerce, materially falsified header information in multiple commercial electronic mail messages and intentionally initiated the transmission of such messages, in which the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during a 24-hour period, 25,000 during a 30-day period, and 250,000 during a 1-year period, to wit, MOELLER, VITALE, and WADE altered the header information of spam e-mails that they transmitted via the Internet to AOL subscribers to disguise the spam e-mails' true origin.

(Title 18, United States Code,
Sections 1037(a)(3) and (b)(2)(C); and 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

3.  I am a Special Agent with the Secret Service, and I have been involved personally in the investigation of this matter.  I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, including interviews I have conducted, my examination of reports and records, and my conversations with other law enforcement officers and other individuals.  Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation.  Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, unless noted otherwise.

## TECHNICAL BACKGROUND

4.  Based on my training and experience, I am aware of the following:

a.    "E-mail," is a mechanism by which individuals may transmit messages over electronic communications networks, such as the Internet.  Sent e-mail are stored in electronic mailboxes which are maintained on computer systems.  An e-mail address is a string of words and symbols that identifies a particular electronic mailbox where e-mail can be sent.  E-mail addresses usually have the following format: *username@domain.postfix*,

where "username" designates the specific electronic mailbox, "domain" refers to the computer system which hosts the mailbox, and "postfix" refers to the type of organization which has registered the domain name for use on the Internet (*e.g.*, ".com," ".net," ".edu," or ".org").

      b.    E-mails transmitted over the Internet generally consist of two main parts, which may be referred to as the "header" and the "body." The body is the message itself and may consist of text, images, or other information. The header usually is subdivided into several fields, each of which display specific information. For example, "From" (the sender's e-mail address), "To" (the receiver's e-mail address), "Subject" (a brief summary of the message contents) and "Date" (the local time and date when the e-mail was sent).

      c.    Once an e-mail message has been composed and addressed, it is usually sent to its intended recipient via a computer system known as a "mail transfer agent" (or "MTA"). The MTA first looks at the header information for the receiver's e-mail address and then checks a centralized list to find a computer system known as a "mail exchange server" (or "MX") which accepts e-mail for the particular domain hosting the e-mail recipient's electronic mailbox.[1] The MTA then transmits the e-mail over the Internet to the correct mail exchange server. The MX, in addition to receiving an e-mail, may record information about it, including the IP address[2] for the computer server which sent the e-mail to the mail exchange server.

      d.    "Instant messaging" (or "IM") is another means by which individuals may transmit messages over electronic communications networks. IM services typically allow individuals to engage in real time, one-to-one text messaging between two computers or other text-enabled electronic devices, such as Blackberries or cellphones. While instant message communications, unlike e-mail, are not routinely stored or retained in the computers on which they occur, it is nevertheless

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    [1]    A "server" is generally a computer connected to an electronic communications network, such as the Internet. Servers perform a variety of functions, such as storing data, routing e-mail, or printing documents.

    [2]    An IP address is a unique numerical address identifying each computer on the Internet. IP addresses are conventionally written in the dot-punctuated form *num1.num2.num3.num4* (*e.g.*, 192.168.3.47).

possible to capture the contents of an instant message through logging functions built into the instant messaging software and so preserve the correspondence as a text file on the computer.

e.    "Spam" is unsolicited bulk e-mail transmitted over the Internet or other electronic communications networks and often contains a product advertisement and a message urging the recipient to visit an associated website (the "target website") where the product may be purchased.  Individuals who send spam ("spammers") generally are paid based on the number of people who visit the target website or on the total amount of product sold as a result of spamming.  "Conversion" refers to the number of people who visit the target website or the amount of product sold per unit of spam.

f.    Spammers typically take advantage of the economies of scale that result from the extremely low cost of sending e-mail: spammers may send e-mails to a distribution list containing millions of e-mail addresses with the expectation that they will profit even if only a small fraction of recipients respond. Spammers may obtain e-mail addresses from open sources, such as combing the Internet for websites which list company directories. Spammers may also buy lists of e-mail addresses which have been gathered by other means, such as specialized programs which surreptitiously log the screen names of individuals who visit online chatrooms.

g.    Spammers often take steps to conceal the true source or origin of their bulk e-mail messages in part to hide their identity, but also to defeat certain Internet e-mail filters that might otherwise be set to block e-mail identified as being generated by a particular source.  This way, the sender of spam e-mail can distribute it with a greater degree of certainty that the e-mail will circumvent filters, reach the maximum number of recipients, and ultimately be more profitable.

h.    Spammers employ a variety of techniques to hide their identity and the source of their spam.  For example, they may create fake header information in their e-mails to make the messages appear to have originated from a legitimate sender. They may also use third-party computers such as "open proxy" computer servers.  An open proxy is a computer system that has been configured to re-transmit (re-route) computerized information (including e-mails) sent from an originating computer on to a destination computer system.  Typically, an open proxy receives an e-mail sent over the Internet and then alters the header information that would otherwise identify the identity of the sender.  Spam sent via an open proxy thus appears to the

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recipient to have been sent from the Internet address (IP address and/or e-mail address) of the open proxy, rather than the spammer.  Open proxies operate in much the same way as third-party re-mailing services do for postal mail, with the key exception that the owner or operator of the computer being used as a proxy often does not realize that his or her computer is being used for this purpose.  Indeed, computer viruses and other forms of malicious computer code have been released over the Internet for the specific purpose of infecting computers with a program which causes them to act as open proxies.  Spammers often rent from computer hackers tens of thousands of such infected computers that function as open proxies (sometimes referred to as "bots" or "p's") which have been gathered into networks ("botnets") for the purpose of transmitting large volumes of spam e-mail.

## SUMMARY OF THE INVESTIGATION

5.  As set forth more fully below, I am involved in an investigation concerning spam e-mail sent to subscribers of America Online, Inc. ("AOL").  As described below, a confidential informant ("CI"),[3] acting at law enforcement direction, offered TODD MOELLER and ADAM VITALE the opportunity to send spam e-mails that would advertise a purported computer security product and would contain a link to a website where the product could purportedly be purchased.  As set forth more fully below, there is probable cause to believe that, between in or about April 26, 2005 and in or about August 23, 2005, MOELLER and VITALE, acting together with CHRIS WADE, who is believed to have supplied them with open proxies to help transmit and disguise the origin of their spam e-mails, generated and transmitted over the Internet over 47,000 spam e-mails which were directed to more than 1.2 million AOL e-mail addresses, including 12,600 AOL e-mail addresses associated with AOL subscribers residing in the Southern District of New York.  There is also probable cause to believe that MOELLER, VITALE and WADE took steps to conceal the true source of their spam, such as manipulating header information and using open proxies.

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[3]    The CI has been convicted of an Internet fraud-related crime and is cooperating with law enforcement in the hopes of receiving a reduced sentence.  The CI's information has proven to be accurate, reliable, and corroborated by evidence developed in this investigation.

## THE INVESTIGATION

6.  Based on my conversations with representatives of AOL and my participation in the investigation, I am aware of the following:

a.  AOL is a commercial Internet Service Provider ("ISP") that offers to its subscribers, among other things, access to the Internet, as well as e-mail service and instant messaging.  AOL is one of the world's largest ISPs, with approximately 30 million subscribers worldwide.  AOL issues each of its subscribers one or more unique User IDs (also referred to as "screen names"), which serve, among other things, as a portion of an e-mail address associated with that customer's AOL account. AOL customers may use each such e-mail address (for example, "*user*@aol.com") both to send and receive e-mail over the Internet and to each other within AOL's own electronic communications network.

b.  AOL uses a variety of means to filter e-mails arriving externally from the Internet and transmitted internally among its subscribers to ensure that the e-mails are not spam. Among other things, AOL computer programs check each e-mail's header information (particularly the sender's e-mail address) and the IP address associated with the server which transmitted the e-mail to AOL's mail exchange servers.  E-mails with headers whose features match those associated with spam and e-mails sent from IP addresses linked to known or suspected spam open proxies may be blocked and not forwarded to AOL subscribers' e-mail accounts.  AOL blocks significant amounts of Spam e-mail on a daily basis.  For example, according to AOL's website, www.aol.com, which I reviewed at approximately 4:15 p.m. on or about February 8, 2006, AOL had blocked approximately 2,346,847,252 spam e-mails so far that day and had blocked nearly 29 billion spam e-mails so far that month.

c.  TODD MOELLER, the defendant, resides in Bayville, New Jersey.  According to the CI, MOELLER is a spammer who in the past has transmitted bulk spam e-mails for an online business run by the CI.

d.  ADAM VITALE, the defendant, resides in Boynton Beach, Florida.  According to the CI, VITALE is also a spammer who in the past has transmitted bulk spam e-mails for an on-line business run by the CI.

e.  CHRIS WADE, the defendant, resides in The Colony, Texas.  As detailed below, WADE supplied open proxies which

MOELLER and VITALE used in connection with at least the spamming described in this Complaint.

7.   Between April and August 2005, the CI, at the direction of law enforcement, communicated exclusively via instant messaging with two individuals whom the CI knew by their instant messaging screen names and who were later identified by law enforcement as TODD MOELLER and ADAM VITALE.  The CI maintained logs of each of these IM chats, which the CI turned over to law enforcement.  Based on my participation in this investigation, I believe that during these IM chats, MOELLER used the screen names "insuspendtrill," "trillsbox," and "mailmantrill," while VITALE used the screen names "n1hustler4life," "batch1," and "SpamsMVP."

8.   My knowledge of the CI's IM chats with TODD MOELLER and ADAM VITALE, which are detailed below, is based on my review of logs of these communications maintained by the CI, as well as my debriefings of the CI.  I have included my preliminary interpretations of certain terms and phrases (noted by brackets), as well as of the content of the IM chats described in this Complaint.  These preliminary interpretations are based on my and other agents' general training and experience, my debriefings of the CI, as well as my involvement in this investigation.  Quoted portions of the IM chats are included verbatim, including typographical errors.

9.   On or about April 26, 2006, the CI contacted TODD MOELLER, the defendant) via instant messaging.  During this IM chat:

a.   The CI informed MOELLER that he/she is interested in promoting a new product via spam.  MOELLER responded that he had "40 servers right now" [referring to computer systems to send spam] and "35k peasd," [referring to 35,000 infected computers used as spam open proxies], and that he currently made approximately $40,000 per month sending spam e-mail advertising the sale of stock shares.

b.   MOELLER then complained that the CI owed him approximately $20,000 for spamming he did for the CI in the past.  After the CI reassured MOELLER that he would be paid for his earlier spamming, MOELLER asked the CI to purchase a new copy of "Send-Safe," a bulk e-mail program, for him.  After the CI expressed concern that "Send-Safe" would not be able to transmit the volume of spam needed by the CI, MOELLER responded that he would be able to send a high volume of spam because he had so many proxies available.

c.    MOELLER further boasted to the CI that "i do 1.5 mill/hr, 95% inbox aol" [he is able to mail 1.5 million spam e-mails per hour with a 95% success rate of defeating AOL's spam filters], that "all i mailk is aol" [MOELLER exclusively spams AOL subscribers], and that "what i did last time [spamming for the CI in the past], was lunch money compared to now."[4]  The CI ended the chat by telling MOELLER that he/she needed to organize the new product to spam but would get back in touch with MOELLER.

10.    On or about May 17, 2005, the TODD MOELLER contacted the CI via instant messaging.  During this IM chat, MOELLER wanted to know if the CI needed him to start spamming ("you going to be ready for ym [my] services soon?").  MOELLER added that he "got a team ready" and asked the CI to "let me know when your ready, you know ill be the only mailer youll need, everything is straight all lined up."  MOELLER also asked the CI for $400 so that he could buy some "proxies."

11.    On or about July 5, 2005, ADAM VITALE contacted the CI via instant messaging.  During this IM chat:

a.    VITALE offered the CI the opportunity to work for him as a spammer[5] sending bulk e-mails promoting stocks.  In particular, VITALE offered to pay the CI "10k [$10,000] if you can make it move [increase the stock's sales volume]" and promised more money if the CI did a good job.

b.    VITALE stated that he worked with several individuals sending spam e-mail, including "Trill" [MOELLER], who VITALE stated had recently been arrested on minor charges.

c.    VITALE also supplied the CI with his telephone number, 718-598-5201.

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[4]    I know from my training and experience, as well as my conversations with the CI, that spammers are often able to judge their success at defeating spam filters by opening "seed" e-mail accounts at the target Internet service provider, such as AOL. For example, a spammer could set up 10 seed AOL e-mail accounts and include them in the list of e-mail addresses to be spammed. If 8 of the accounts received the spam e-mail (meaning AOL blocked the spam for 2 of the accounts), the spammer could claim an 80% success rate.

[5]    In fact, VITALE admonished the CI for using the term "spammer," instead preferring the term "mailer."

12.    I have reviewed subscriber records for telephone number
718-598-5201 and have learned that it is registered in the name
of "Adam Vitale" at a fictional address in Bayside, New York.

13.    On or about July 19, 2005, at or about 10:07 a.m., the
CI contacted TODD MOELLER.   During this IM chat:

a.    Referring to his/her July 5, 2005 chat with VITALE
(in which VITALE stated that "Trill" had been arrested on minor
charges), the CI asked MOELLER if everything was "okay" because
"someone told me you were in jail or something."  MOELLER
responded "yea old warrants im good . . . traffic and probation
shit."

b.    The CI and MOELLER then discussed the CI's need
for spammers to send bulk e-mail to promote his product, which
the CI identified as a computer security program.  Referring to
AOL, the CI asked MOELLER "how much [spam] can you get in there /
past filters"?  MOELLER responded that he had 20 computer servers
but that he was currently running only 10, each of which could
transmit 5 to 10 million spam e-mails per hour, and that
approximately 80% of his e-mails were delivered to AOL
subscribers' electronic mailboxes ("5-10 mill on each box 80%
del, i got 20 box's").  MOELLER explained that he needed
additional proxies to handle the job of helping to disguise the
origin of e-mails sent by his remaining servers ("all i would
need is more peas to run em all / right now i run 10 . . . i can
get more, i got a whole team set up").

c.    Referring to MOELLER's spamming partner, VITALE,
the CI inquired why MOELLER was "grouped with n1hustler  / I know
already you're the brains in the whole operation / you just like
giving up half your cash?"  MOELLER responded "cant do this
alone, you need to organize."

d.    Later in the chat, the CI and MOELLER discussed
MOELLER's stock spamming activities.  The CI asked MOELLER what
stock they would promote next so that the CI could buy it first
and take advantage of any rise in price.  MOELLER responded that
"i can do that" but stated that the CI should "honestly talk to
adam [ADAM VITALE] / he handles all of that / this is his
expertise / i handle the advertising [spamming]."

e.    MOELLER also provided the CI with wire
instructions for a bank account held in the name of "Via Telecom
LLC" (the "Via Telecom Account") so the CI could pay MOELLER's
bill for spamming he had done for the CI in the past.

14.   I have reviewed account opening records for the Via Telecom Account and have learned that the account was opened by an individual identified as "Adam Vitale" with an address in Boynton Beach, Florida.

15.   On or about July 19, 2005, at or about 10:09 a.m. – approximately 2 minutes after the CI had contacted TODD MOELLER, as described in Paragraph 13 above – the CI contacted ADAM VITALE via instant messaging.  During this IM chat:

        a.   VITALE confirmed that he was still sending spam e-mails promoting stocks.

        b.   VITALE also identified his partner in stock spamming as "Todd aka trill."

16.   On or about July 21, 2005, TODD MOELLER attempted to contact the CI via instant messaging.  During this attempted IM chat, MOELLER stated, "hey / i want [s]omething new to mail, your shit sounds pretty good / let me know when your ready for me".

17.   On or about July 24, 2005, ADAM VITALE also attempted to contact the CI via instant messaging.  During this attempted chat, VITALE stated, "BRO / i need to talk to you / you said someting about spyware [the CI's purported product] / i got a way to get your shit on A LOT of pc's [computers] / hit me up let me know."

18.   On or about August 8, 2005, the CI contacted ADAM VITALE via instant messaging.  During this IM chat:

        a.   Referring to TODD MOELLER, the CI asked VITALE, "you teamed with him or separate operation?"  VITALE responded, "teamed im GI he is aol" [meaning VITALE is responsible for sending spam e-mail to general Internet ("GI") e-mail addresses while MOELLER specializes in AOL subscribers' e-mail addresses].

        b.   The CI then inquired whether MOELLER and VITALE sent their spam directly from e-mail servers or through open proxies, to which VITALE responded "p" [open proxies].  As noted above, one of the methods spammers use to conceal their identity and the origin of their spam is through the use of open proxies.

19.   On or about August 10, 2005, at or about 10:58 a.m., the CI contacted ADAM VITALE via instant messaging.  During this IM chat, the CI, referring to TODD MOELLER, asked "geez where is trill / he doesn't work much does he."  VITALE responded "all he has to do is keep the header's comen and he can do w/e he wants"

[meaning that MOELLER supplies VITALE with altered header information to help conceal the origin of MOELLER's and VITALE's spam e-mails].

20.    On or about August 10, 2005, at or about 3:50 p.m., TODD MOELLER contacted the CI via instant messaging.  During this IM chat:

    a.    The CI asked MOELLER to begin spamming the following morning.  MOELLER, however, demanded an up-front payment of $5,000 to "jsut cover costs for me to start the campaign, my porxies alone are 2,000 weekly. . . . i can have 10 box's set up and a new list of peas set aside just for your campaigns, the 5k will cover that."

    b.    After further discussions, MOELLER agreed to begin spamming for the CI provided he was made a full partner with the CI, received 50% of the proceeds from the CI's purported new business venture, and a payment of $40,000 from the initial profits.  The CI agreed to this arrangement.

    c.    The CI also asked MOELLER for his e-mail address so the CI could mail him the promotional text for the spam e-mail, as well as "affiliate links" for a website selling the CI's software product.  MOELLER identified his e-mail address as "inboxagent@gmail.com."

21.    I know from my training and experience, as well as my participation in this investigation, that a "link" generally refers to a piece of text in an e-mail or other document which, if clicked on by a computer user, will direct that user to a target website.  Based on my conversations with the CI and my training and experience, an "affiliate link" refers to a link which contains text that is unique to the particular spammer in whose bulk e-mail the link appears.  Software at the target website can be set up to count the number of people entering the site through each affiliate link, as well as the number of these people who purchase a product advertised at the site.  Affiliate links thus make it possible to track each spammer's performance – and the amount of money they will be paid.

22.    Based on my review of the CI's e-mail logs, on or about August 11, 2006, the CI sent an affiliate link unique to TODD MOELLER at his e-mail address, inboxagent@gmail.com.  At the same time, the CI also e-mailed MOELLER promotional text advertising the CI's computer security product which would also be included in the spam e-mail.

23.   On or about August 12, 2006, TODD MOELLER contacted the CI via instant messaging.  During this IM chat:

a.   MOELLER reported that he was presently using 2 servers to send spam promoting stocks, that he was "killing a stock deal right now" [sending spam promoting shares of a certain stock].

b.   When the CI inquired when MOELLER would begin spamming to promote the CI's computer security product, MOELLER replied that he needed "10 box's" [spam e-mail servers] and asked the CI to send him $1,500 via PayPal to pay for them ("understand me, all i need is 1500 pay pal, i get 10 box's ordered 24 hours later were back").  The CI promised to look into sending MOELLER the money.

24.   On or about August 15, 2005, the CI contacted TODD MOELLER via instant messaging.  During this IM chat, the CI promised to send MOELLER via Western Union the $1,500 they had agreed upon for MOELLER to obtain more servers.  When the CI asked MOELLER for his name and the place to which he/she should send the money, MOELLER responded:  "Todd Moeller Toms River New jersey."

25.   Based on my participation in this investigation and my review of a Western Union transfer receipt, I know that on or about August 15, 2005, law enforcement agents sent in the name of the CI approximately $1,000 via Western Union to "Todd Moeller" in Toms River, New Jersey, and that an individual identified as "Todd Moeller" picked up the money there.

26.   On or about August 17, 2005, at or about 7:39 p.m., the CI contacted MOELLER via instant messaging.  During this IM chat:

a.   The CI inquired when MOELLER would begin spamming. MOELLER, referring to the $1,000 the CI had sent him via Western Union, replied, "man i ordered more box's and paid for proxies, costed me way more than 1k [$1,000] yes i said id get started im trying for tonight setting up new box's now."

b.   Later, referring to the number of spam e-mail servers he had ordered, MOELLER stated that he "only started off with two," but that "adam [ADAM VITALE] buying 3 today".

c.   MOELLER also wanted to know if the CI had any other spammers sending bulk e-mail to AOL subscribers ("anyone hitting aol?").  The CI responded by reassuring MOELLER "no one on aol yet im saving it for you."

d.    MOELLER ended the chat by telling the CI that he would let him/her know when he started spamming.

27.    On or about August 17, 2005, at or about 8:01 p.m., TODD MOELLER sent an instant message to the CI reporting that he had started spamming for the CI using one server and was sending approximately 2 million spam e-mails per hour with an 80% success rate of defeating AOL's spam filters ("started one box 2 mill an hour 80% in\").

28.    On or about August 17, 2005, at or around 8:44 p.m., TODD MOELLER sent the CI an instant message with an update that he had sent approximately 500,000 spam e-mail messages to AOL e-mail addresses so far ("sent 500k already").

29.    A few hours later, on or about August 18, 2005, at or around 1:08 a.m., TODD MOELLER, the defendant, sent the CI another instant message stating that he had sent approximately 2 million spam e-mail messages to AOL subscribers and asked the CI how many spam e-mails had converted into sales of the CI's product ("like 2 mill sent so far / let me know the results mailer going good").

30.    The same day, at or around 11:41 a.m., MOELLER sent an instant message to the CI stating that he had "only sent a few million" spam e-mails due to a problem with his spam e-mail server.   MOELLER further stated, "yea i havent been hitting it that hard, i only got one box mailing, this was just a test . . . if i had more box's it would be murder."

31.    At or around 3:11 p.m., on the same day, MOELLER again contacted the CI via instant messaging.   During this IM chat:

a.    MOELLER stated that ADAM VITALE was in the process of obtaining more servers ("i got adam on getting more box's today").

b.    When the CI asked where "hustler" [VITALE, who used the screen name "n1hustler4life" in IM chats with the CI] is so he can get started on "some GI" [General Internet spamming versus AOL spamming], MOELLER responded "thats my partner / i just called him / he works on stock deals and we together have a team of mailers."   Later, MOELLER stated that he and VITALE would meet the CI to sign a contract memorializing the partnership MOELLER and the CI had agreed upon (see Paragraph 20(b) above). MOELLER further stated that he would use a company, "Viatelecom," to represent him in the partnership and that he was anxious to

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begin spamming("me and adam flying out there soon, the deal you
have cut with me im going to sign under my LLC Viatelecom and
take 50% run through that . . . lets just get rocking and make
this paper [money]").

        c.    MOELLER further expanded on his relationship with
VITALE: "we've been breaking bread for a while now . . . we
alrady have been doing stock deals through viatelecom, i own a
piece of that already."  With respect to VITALE's role in the
current spamming project for the CI, MOELLER stated, "it's a
team, if im out and servers are down he [VITALE] can get them
back running, deal with mailers . . . ."

        d. MOELLER also discussed his spamming capabilities
and techniques.  In particular, MOELLER stated that he could send
20 million spam e-mails per day per server, and was capable of
running between 10 and 20 servers by himself.  In addition, he
had access to 5,000 bots whose users subscribe to AOL which he
could use to spam other AOL subscribers through one of AOL's mail
exchange servers ("im capable of 20 mill/day each box / easy / i
got 5k aol peas . . . aol mailing proxies . . . enabled to mail
mailin01-mx.aol.com . . . and optimized to proxy lock the domain
and use the internal smtp").  MOELLER also stated that he
"designs the headers" [manipulates spam e-mail headers
information to hide their origin].

        e.    MOELLER boasted that "last night was jsut a test
bro . . . they arent ready for trill, tell them to hold onto
their socks when im full blast".  MOELLER requested an additional
payment so that he could obtain additional servers to send more
spam e-mails for the CI.  The CI promised to send more money via
Western Union to "Todd Moeller" in Toms River, New Jersey.

    32.    Based on my participation in this investigation and my
review of a Western Union transfer receipt, I know that on or
about August 19, 2005, law enforcement agents sent in the name of
the CI approximately $1,000 via Western Union to "Todd Moeller"
in Toms River, New Jersey, and that an individual identified as
"Todd Moeller" picked up the money in Ortley Beach, New Jersey,
which I know to be near Toms River, New Jersey.

    33.    On or about August 19, 2005, MOELLER contacted the CI
via instant messaging.  During this IM chat:

        a.    MOELLER reported that he had "sent a lot more mail
last night . . . i mailed 15 mill last night."  After the CI
questioned how effectively MOELLER's e-mails had defeated AOL's
spam filters, MOELLER responded, "ok yea ill make a new header

tonight and start over on my lists" [he would create a new fake header with which to send spam to his list of AOL subscribers].

        b.    The CI then inquired whether ADAM VITALE was prepared to start spamming general Internet addresses, stated that he had an affiliate link made for VITALE, and asked MOELLER whether he wanted it.  MOELLER responded, "yes he will handle GI" and promised to talk to VITALE to see if he could send out a high volume of spam e-mails over the coming weekend.

      34.  On or about August 22, 2005, at or around 11:54 a.m., the CI contacted ADAM VITALE via instant messaging.  During this IM chat:

        a.    VITALE initially demanded that the CI pay him for the recent spamming.  After the CI stated that he owed TODD MOELLER, not VITALE, VITALE responded, "you don't get it do you . . . i mail AOL you dum fuck / todd make's the header's."

        b.    VITALE continued "those aol's he is mailing is shit i had" [the AOL subscriber e-mail addresses spammed by MOELLER came from VITALE].  When the CI asked VITALE how big was his list of AOL subscriber e-mail addresses, VITALE responded, "40 million" and bragged that "when we veryed [checked them] / only 300k were bad . . .  out of all of them."

        c.    Later in the chat, VITALE informed the CI that "when you talk to todd [MOELLER] or cut a deal with him / its with me too."

      35.  On or about August 22, 2005, at or around 12:53 p.m., TODD MOELLER contacted the CI via instant messaging and requested that the CI send his "proxy guy" a payment via Western Union because "he needs to be paid today."  The CI agreed and MOELLER supplied his "proxy guy's" identity:  "His name is Chris Wade Las vegas NV / he on vacation in vegas."

      36.  On or about August 22, 2005, at or around 4:41 p.m., TODD MOELLER contacted the CI again via instant messaging. During this IM chat:

        a.    MOELLER asked the CI whether he/she had sent the payment to CHRIS WADE.  The CI responded by inquiring about WADE. MOELLER replied that WADE was "my proxy guy / known him for years . . . ive used his shit for stocks yea / for 2-3 years."

        b.    When the CI asked if WADE was the person supplying proxies for MOELLER's spamming for the CI ("so this guy is

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supplying the peas for this operation we oding now?") and whether he was discreet, MOELLER stated "nothing to worry about and yes he is supplying us for this operation."

       c.   The CI further asked MOELLER how may AOL-specific proxies WADE could supply, to which MOELLER responded "600-1k / but fast ass peas" that refresh every 15 minutes [meaning WADE has control of 600 to 1000 "bots" that are used by AOL subscribers and that are automatically checked every 15 minutes to make sure they are still connected to the Internet and capable to transmitting spam]. MOELLER further stated that WADE is a native of Australia.

       d.   The CI ended the conversation by agreeing to drop off an envelope containing $2,000 at a casino in Las Vegas where WADE was staying.

   37.  On or about August 22, 2005, at or around 10:38 p.m., TODD MOELLER again contacted the CI to inquire whether he/she had dropped off the money for CHRIS WADE, as agreed. The CI responded that he/she had been unable to do so. MOELLER then asked the CI to send both him and WADE $1,000 each and gave the CI the telephone number for his "proxy guy," 214-680-4926, stated that his name was "Chris," and instructed the CI to call him to arrange to give him the money.[6] Earlier in the chat, the CI asked MOELLER how much CHRIS WADE charged him for proxies and MOELLER responded "2500/week."

   38.  Based on my participation in this investigation and my review of Western Union receipts, I have learned that on or about August 24, 2005, law enforcement agents sent in the name of the CI approximately $1,000 each to "Todd Moeller" in Toms River, New Jersey and to "Chris Wade" in Las Vegas, Nevada. I have further learned that the money was picked up by the intended recipients.

   39.  On or about August 24, 2005, after the above-referenced Western Union transfers had been made, the CI made a consensually recorded telephone call to CHRIS WADE at 214-680-4926. I have reviewed a transcript of this telephone call. Based on my review, I have learned the following:

       a.   The CI asked WADE if "Todd" had told him to expect a call from the CI "to get some cash to you for some proxies," to

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   [6]   I have reviewed subscriber information concerning the 214-680-4926 number and have learned that it was subscribed to an individual with the name of "Chris Wade."

which WADE responded affirmatively.  WADE instructed the CI to leave "25" [$2,500] at a casino at which WADE was staying.  The CI stated that, per TODD MOELLER's instructions, he had already sent him a wire for $1,000.

        b.    The CI further asked WADE "how soon can you get stuff up and running again?  I mean I was with Todd this weekend and those were your proxies he already had plugged in."  WADE responded "Yeah, and we're about to boost a shit load [send more spam] cause I got a new . . . a new 20,000 net [botnet] so it'll go up a lot too."

        c.    The CI then asked WADE if he could supply proxies for a "side project" and asked how many proxies WADE could get per day and how often they refreshed.  WADE responded "Well every two min . . . every two minutes they update and I normally have between 6 and 10 thousand a day."

    40.   I have spoken with representatives from AOL, from which I have learned the following:

        a.    Starting on or about August 17, 2005 – the same day TODD MOELLER stated that he had started spamming for the CI – AOL's e-mail filters began logging e-mails (the "SPAM E-mails") which contained the affiliate link that the CI had sent to TODD MOELLER to use in his spam e-mails.

        b.    The header information for most, if not all, of the SPAM E-mails indicated that they had originated from IP addresses on the Internet, as opposed to e-mail accounts located internally in AOL's electronic communications network.

        c.    Between on or about August 17, 2005 and on or about August 23, 2005, AOL's e-mail filters registered a total of 47,156 SPAM E-mail traceable to the activities of TODD MOELLER, ADAM VITALE, and CHRIS WADE.  The header information of most, if not all, of the SPAM E-mails indicated that each was addressed to multiple AOL e-mail addresses.  In fact, the header information in the SPAM E-mails revealed that they were directed to a total of 1,277,401 AOL e-mail addresses.
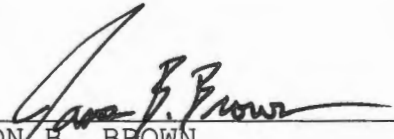
        d.    A review of 490 of the 47,156 SPAM E-mails showed that they originated from 73 unique IP addresses.  In other words, it appears that 73 open proxies were used to send this small fraction of the SPAM E-mails.

        e.    Of the 1,277,401 individual AOL e-mail addresses to which the SPAM E-mails were directed, approximately 12,600

were registered to individuals residing in Manhattan, New York zip codes.
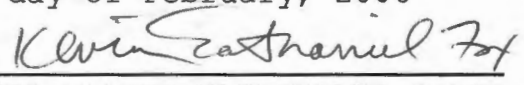
41.    I have also reviewed the header information of several of the SPAM E-mails.  Although, as noted above, most, if not all, of the SPAM E-mails originated externally from the Internet, the header on the SPAM E-mails I reviewed indicated they they had originated from e-mail accounts ending in "@aol.com".  In other words, the e-mails appeared like they had originated from within AOL's own electronic communications network, not the Internet, from which they had actually been sent.  Based on my training and experience, as well as my participation in this investigation, I believe this is an example of the header manipulation to disguise the origin of the SPAM E-mails that TODD MOELLER and ADAM VITALE each discussed with the CI (see, for example, Paragraphs 19, 31(d), 33(a), and 34(a) above).

WHEREFORE, deponent prays that arrest warrants be issued for TODD MOELLER, ADAM VITALE, and CHRIS WADE, the defendants, and that they be imprisoned or bailed as the case may be.


_____
JASON B. BROWN
SPECIAL AGENT
UNITED STATES SECRET SERVICE


Sworn to before me this
16th day of February, 2006

_____
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

KEVIN NATHANIEL FOX
United States Magistrate Judge
Southern District of New York


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